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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/814,234

04/01/2004

Andre Rioux

62-335

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7590

08/09/2006

MANELLI DENISON & SELTER  
2000 M STREET NW SUITE 700  
WASHINGTON, DC 20036-3307

EXAMINER

JUNKER, JONATHAN T

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/814,234	<b>Applicant(s)</b> RIOUX, ANDRE	
	<b>Examiner</b> Jonathan T. Junker	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 1 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 13-15 is/are rejected.
- 7) ☒ Claim(s) 5-12, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/17/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the first sentence of the abstract, the sentence ends with the phrase "or like structure". The phrase is considered a legal term and its use should be avoided in the abstract.

The disclosure is objected to because of the following informalities: Figures 9 and 10 are missing from the brief description of the drawings.

Appropriate correction is required.

The disclosure is objected to because of the following informalities: In the first sentence of the second paragraph of the detailed description section the sentence reads, "The tower may have at least two and up to at least ten modules bolted..." The phrase "up to at least" should be revised.

Appropriate correction is required.

Claims 5-12 and 16 and 17 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claims. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

***Claim Rejections - 35 USC § 112***

Claim 1 recites the limitation "said structure" in the sixth line of the claim. There are two structures represented in the claim. The first structure that is represented is the fitting and the second is the vertical structure. The limitation should be drawn to one of the given structures.

Regarding claim 13 the phrase "or the like" renders the claim indefinite because the claim include elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Bates (US 5,553,975). Bates teaches of a fitting that comprises a body (16 & 17), a body plate member (14), an attachment means (21) and has an accessory receiving means (23) as seen in figure 4 of US Patent 5,553,975. The fitting Bates discloses can also be receivable in an essentially circular shaped aperture and also has a plurality of inwardly protruding sides that define a bolt-receiving aperture. Furthermore, the body of the structure is integrally formed with the plate section of the fitting.

In claim 1, the phrase "for use in retaining a plurality of accessory...has a portion defining a side aperture" is a recitation of intended use, which does not further limit the structural features of the claimed invention. It has been held that a recitation regarding the manner in which a claimed apparatus is intended to be used does not differentiate the claimed apparatus from a prior art apparatus which satisfies the claimed limitations.

In claim 1 the phrases "and so shaped as to be... engagement within said side aperture" and "attachable to said structure and... side aperture by retaining means" and "adapted to retain said accessory member to said body" are a recitation of capability, which does not further limit the structural features of the claimed invention. It has been held that a recitation regarding what the apparatus is to be capable of does not differentiate the claimed apparatus from prior art apparatus which satisfies the claimed structural limitations.

Claims 1-4 are drawn to a fitting; however, most of the limitations in the claim are drawn to the vertical structural unit, and not to the fitting rendering the claims to be very broad. In addition, in claim 2, since the aperture on the vertical structural unit is not being claimed the fitting can be almost any shape and still work for the given criteria.

Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Lange (US 5,588,274). Lange teaches of a modular structure comprises a four sided rectangular box (10) with side portions defining at least one side aperture (6) as seen in Figure 1 of US patent 5,588,274. Lange further teaches of a modular structure with side apertures that are essentially circular shaped with a plurality of inwardly protruding side portions that define a bolt-receiving aperture. As seen in Figure 1 of US patent 5,588,274, what are considered to be the inwardly protruding side portions are the tabs (25) that encircle the aperture. As seen in the figure the tabs are inwardly protruding towards the center of the box. The bolt receiving means are the gaps formed between the tabs (26).

In claim 13, the phrase "of use in a telecommunications tower, electricity pylon or line assembly" is a recitation of intended use, which does not further limit the structural features of the claimed invention. It has been held that a recitation regarding the manner in which a claimed apparatus is intended to be used does not differentiate the claimed apparatus from a prior art apparatus which satisfies the claimed limitations.

***Claim Rejections - 35 USC § 103***

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bates (US 5,553,978). Claim 3 requires a fitting with an extended oval having a vertical axis length greater than its horizontal axis, and having four inwardly protruding symmetrically opposed portions. Bates does not disclose an oval shaped plate with four inwardly protruding symmetrically opposed portions. However, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to form the fitting in such a manner, since it has been held to be within the general skill of a worker in the art to select a known shape on the basis of suitability for the intended use as a matter of obvious design choice. Furthermore, applicant has not disclosed the criticality of this structural feature.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lange (US 5,588,274). Claim 14 requires a modular unit with side apertures with an extended oval having a vertical axis length greater than its horizontal axis, and having four

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inwardly protruding symmetrically opposed portions with bolt receiving apertures. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to form the side apertures in such a manner, since it has been held to be within the general skill of a worker in the art to select a known shape on the basis of suitability for the intended use as a matter of obvious design choice. Furthermore, applicant has not disclosed the criticality of this structural feature.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lange (US 5,588,274). Claim 15 gives dimensions on the size of the modular structure, however; applicant has not disclosed the criticality of the given dimensions to the structure. Without disclosing the criticality of the dimension, the modular structural framing system taught by Lange can be modified to various dimensions.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan T. Junker whose telephone number is (571) 272-4020. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

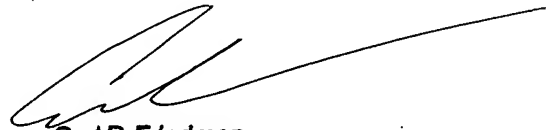


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JTJ  
7/10/06



**Carl D. Friedman**  
**Supervisory Patent Examiner**  
**Group 3600**